THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 2292 OF 2006

Between:

G. Krishnamurthy, s/o late Sitaiah, Aged: 51 years,

R/o H.No. 19-9 (Old), Vivekanandanagar Colony,

Gaddiannaram, Saroornagar Post, Hyderabad.

… PETITIONER

And:

The State Bank of India,

Rep. by its Authorised Officer,

Main Branch, Hyderabad.

… RESPONDENT

Counsel for the Petitioner: Sri V.Brahmaiah Chowdary

Counsel for the Respondent : None Appeared

ORAL ORDER :

Heard the learned counsel for the petitioner and the writ petition is taken up for disposal at the stage of admission.

The writ petitioner availed a term loan from the respondent-Bank to a tune of Rs.5,40,000/- and defaulted in payment of installments. A notice u/Sec. 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short 'the Act') was issued on 20.8.2005 calling upon the petitioner to discharge the outstanding liability in an amount of Rs. 4,90,202.99 ps, + interest from 31.3.2000. The petitioner was informed that on failure to repay the aforesaid amount with further interest and incidental expenses as specified in the notice, the bank would exercise all or any of the rights under sub-sec.(4) of Sec. 13

of the Act.

In respect to the above notice the petitioner submitted his explanation/reply dt 5.9.2005 seeking one time settlement for discharging the liability explaining the reasons for default and requesting deferment of any action u/sec. 13(4) of the Act for the reasons and in the circumstances spelt out in the explanation. But the respondent-bank without issuing any reply to the petitioner's representation dt 5.9.2005, has proceeded to take possession of the secured assets u/Sec. 13(4) of the Act, is the complaint. Reliance is placed on the decision of the Supreme Court in ***Mardia Chemicals Ltd. V Union of India ()*** for the contention that the respondent-bank is under an obligation to reply to the representation made by a borrower responding to the notice u/Sec. 13(2) of the Act and that the secured creditor/bank should respond to such representation made by a borrower before proceeding to take possession of the assets u/Sec. 13(4) of the Act.

In any event on behalf of the petitioner it is not stated as to what is the effect of an action of the secured creditor/bank taking possession of the secured assets u/Sec. 13(4) of the Act without replying to a representation made by a borrower pursuant to a notice u/Sec. 13(2) of the Act. Is the issuing of a reply by the secured creditor a condition precedent to the exercise of the power of taking possession of the assets u/Sec. 13(4) of the Act, is not an aspect that is urged by the petitioner.

The petitioner states that the secured assets have now been taken possession of by the respondent-Bank u/Sec. 13(4) of the Act. If the petitioner is aggrieved by the action u/Sec. 13(4) of the Act, the petitioner has an available effective alternative remedy by way of an appeal to the Debts Recovery Tribunal u/Sec. 17 of the Act. The petitioner would like to pursue such remedy now, since the possession of the secured assets has been taken by the respondent-Bank.

In the aforesaid circumstances, the writ petition is dismissed leaving the petitioner the liberty to pursue the remedies u/Sec. 17 of the Act. No order as to costs.

Dated: 13.03.2006 ----------

Pvsn Justice G. Raghuram